HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII 32 (2) (b)

Description of the case.

W.P. No. 364/2006 (M.S)

Jaswant Singh

Vs.

Labour Commissioner and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 13.04.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINIAL

WRIT PETITION No. 364 (M/S) OF 2006

Jaswant Singh aged 40 years S/o Gurmukh Singh
R/o Vill. Gangapur P.O. BhajuaNagala Bajpur
Udham Singh Nagar. .....Petitioner.

Versus

1. Labour Commissioner, 298, Himgiri Vihar, Ajabpur, Dehradun.
2. Prescribed Authority payment of wages Act 1936 and Assistant Labour Commissioner, Haridwar.
3. Collector, Udham Singh Nagar.
4. Mohammad Isha S/o Saraydeen
5. Mohammad Basir S/o not known
6. Sri Vajeer S/o Not known
7. Sri Bani Mohammad Isha S/o Not known
8. Smt. Dilbibi not known
   All R/o Pidhi Paraw, Lal Dhang, Haridwar. .....Respondents

13.04.2006

Dr. Udyog Shukla, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Udyog Shukla, Learned for the petitioner, and learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a setting aside the order dated 11.03.2005 & 08.06.2005 passed by the respondent no. 2.

Briefly stated according to the case of the petitioner, in the year 2004, on 30.10.2005, the petitioner got work for plantation in forest range Shyampur and he engaged the labours and completed the plantation work in schedule period. The petitioner cleared all the salaries dues etc. On 18.10.2005, respondent no. 4 and others filed a claim petition against the petitioner under the payment of Wages Act, 1936 stating that they have worked from 01.08.2003 to 25.01.2004 and as such the order was passed under the Payment of Wages Act. The petitioner has filed restoration application on the ground he has never received any notice and has alleged that the order passed by the respondent No. 2 is cryptic.

Petitioner has stated in paragraph 13 of the writ petition the grounds for non appearance, same is quoted below:

"13. That on 20.01.2006, the respondent no. 2 rejected the restoration application dated 14.07.2005 filed by the petitioner with out considering the facts as stated in paragraph 13 of the writ petition to the following effect:

(a) That the petitioner never receive the order no. 417/17 dated 11.3.2005.

(b) That first time petitioner got knowledge about case no. 16/2005 through the letter dated 08.06.2005 written by the respondent no. 2 to the respondent no. 3 that some case is pending against the petitioner .before the respondent no.2.

(c) That the petitioner's address on the registered summon dated 30.10.2004 sent by the respondent no.2 was wrong.

(d) That the News Paper Notice published by the respondent no.4 in the Local Daily of Haridwar District "Badri Bishal." This newspaper has limited circulation area in the Hardwar (Garhwal region). The petitioner is permanent resident of Udham Singh Nagar District of the Kumaon region. The respondent no. 4 intentionally published the notice in the local daily whereas the respondent no. 4 was well aware that the news paper not circulated in the Udham Singh Nagar. If the respondent fairly filed the case against the petitioner so he could published the notice in the widely circulated news papers like Amar Ujala or Danik Jagran so that the petitioner could get knowledge of the case.

(e) That the respondent no. 4 and others never being employed by the petitioner.

(f) *That the respondent No.4 and four others stated in their statements recorded before the respondent no.2, which they worked with the petitioner from 1.8.2003 to 25.1.2004. Whereas, in fact the petitioner got the work order for the plantation from 30.10.2004 onward. So, it proves that the case filed by the respondent no. 4 and others on the basis of fraudulent facts. This could not be cleared without giving hearing opportunity to the petitioner.*

(g) *That the order dated 11.3.2005 passed by the respondent no. 2 without considering the real facts of the case. When petitioner approaches to the respondent no.2 through filing restoration application dated 14.7.2005. The respondent no.2 rejected the restoration application of the petitioner ignoring the all pleading on 20.1.2006. This proves that the respondent no. 2 passed the order dated 11.3.2005 and 20.1.2006 with the collusion with respondent no.4"*

The Apex Court has held in M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151 has held as under:

"Law Courts will lose their efficiency if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of the above, the matter is sent back for reconsideration of restoration application.

The recovery order dated 11.03.2005 & 08.06.2005 shall remain in abeyance provided the petitioner deposits an amount of Rs. 15,000/- before respondent no.2 within a week from the production of the certified copy of this order.

However, the same shall be subject to the final order passed by the respondent no. 2 on the restoration application.

Consequently, with petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

13.04.2006
Jain